U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-I- CORP.

DATE: MAY 19, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner states it is engaged in "commercial, planning and support services for U.S. companies investing in South America," and seeks to extend the Beneficiary's temporary employment as its general manager under the L-1A nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in a managerial or executive capacity.

The Director of the Vermont Service Center denied the petition, concluding that the Petitioner did not establish, as required, that it was doing business as defined in the regulations or that the Beneficiary would be employed in a managerial or executive capacity under the extended petition. We dismissed the Petitioner's subsequent appeal based on these grounds after issuing a notice of intent to dismiss (NOID) asking the Petitioner to resolve material inconsistencies in the record regarding its staffing levels, organizational structure, the nature of its business, and its financial status. We further found that the Petitioner's response to the NOID did not overcome those material inconsistencies and determined that it had submitted documents containing false information and willfully misrepresented material facts.

In its motion to reopen, the Petitioner submits a brief and additional evidence, including new affidavits and supporting documents that address our finding of willful misrepresentation of material facts. The Petitioner denies that a representative of the company signed the petition and asserts that its non-attorney immigration preparer submitted the false documentation in question without its knowledge.

Upon review, we will deny the motion.

I. MOTION REQUIREMENTS

To merit reopening or reconsideration, a petitioner must meet the formal filing requirements (such as, for instance, submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), and show proper cause for granting the motion. 8 C.F.R. § 103.5(a)(1).

A motion to reopen is based on factual grounds and must (1) state the new facts to be provided in the reopened proceeding; and (2) be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant a motion to reopen that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

At issue in this matter is whether the newly submitted facts and evidence overcome our previous findings that the Petitioner: (1) willfully misrepresented material facts regarding its staffing levels, organizational structure, financial status, and business activities; (2) did not establish that the Beneficiary would be employed in a managerial or executive capacity under the extended petition; and (3) did not establish that it was doing business in the United States.

For the reasons discussed below, we will deny the motion to reopen as the Petitioner has not overcome the grounds for dismissal of the appeal.

A. Willful Representation of Material Facts

1. AAO Decision

We dismissed the appeal, in part, based on a finding that the Petitioner had provided false information on the Form I-129 and a significant number of supporting documents that contained false information regarding the company's employees, their salaries, the organizational structure of the company, the company's earnings and financial status, and the nature of its activities. This information came to light during our review of the Petitioner's appeal and supporting documents, when we noted that the Petitioner had submitted tax documentation (IRS Forms 1120, 941, and W-2), state quarterly wage reports, and financial statements in support of the appeal which were materially inconsistent with those provided previously and suggested that the evidence submitted prior to the denial had misrepresented the company's staffing levels, employee job titles, and business income.

In response to the NOID we issued to inform the Petitioner of these material discrepancies, counsel for the Petitioner explained that the petition was filed by a "non-attorney immigration consultant" [redacted] that [redacted] had not provided the Petitioner with a copy of the I-129 Petition filing, and that his current whereabouts were unknown as he had ceased business operations. Counsel asserted that any discrepancies were "solely due to the incompetent and suspect actions of [redacted] The Petitioner's response included, in part, IRS tax return transcripts for 2012 and 2013 confirming that the tax returns submitted on appeal reflected the financial information actually reported to the Internal Revenue Service.

We found counsel's assertions regarding [redacted] actions insufficient to overcome our concerns regarding the material discrepancies in the record. We noted that the NOID response lacked supporting evidence, such as a copy of the Petitioner's agreement with [redacted] correspondence between the two parties, or a statement or affidavit from a representative of the Petitioner.

In addition, we emphasized there was no indication on the Form I-129, which was ostensibly signed by a representative of the Petitioner and contained material information now known to be false, that the Petitioner had used a preparer, as contact information was not provided at Part 8 of the petition. Rather, all correspondence from U.S. Citizenship and Immigration Services (USCIS) had been mailed to the Petitioner's address.

Finally, we noted that, even if the Petitioner had established that had prepared the petition, and someone other than the Petitioner had fabricated tax returns and financial documentation, the record contained other evidence, including the petition itself, a business plan, and supporting letters on company letterhead (and bearing signature) which contained false information. We determined that the response as a whole did not support counsel's claim that the Petitioner was not involved in or unaware of any wrongdoing by the claimed preparer.

2. Motion to Reopen

On motion, counsel for the Petitioner contests our finding and denies that the Petitioner knowingly or intentionally made any material misrepresentation to USCIS. Counsel further asserts that "[n]o one associated with Petitioner signed any application in this matter during 2013" and claims that took responsibility for all documents regarding this petition.

The Petitioner submits a declaration from the Beneficiary and a number of supporting documents addressing the issues raised in our appellate decision. The Beneficiary states that the Petitioner hired who did business in 2013 under the name to assist with the company's immigration matters in 2010 and 2013. The Beneficiary acknowledges that he was aware that is not an attorney. He states that, to his knowledge, no one associated with the Petitioner signed any application or form associated with this petition and that took sole responsibility for preparing the L-1 visa extension on his behalf.

The Beneficiary further explains that when the Petitioner received an RFE in late 2013, it immediately provided it to The Beneficiary denies that he or any other employee of reviewed or signed the RFE response prepared. He states he was unable to contact upon receiving the initial decision to deny the petition, but that he later obtained, subsequent to the Petitioner's filing of the appeal, a package of financial documents that he did not recognize and that he believes to be the fabricated documents submitted in support of this petition. Finally, the Beneficiary states that he intends to file a formal complaint against with the Florida State Bar "for his apparent unauthorized practice of law and other alleged misdeeds."

The Beneficiary's statement is accompanied by:

- invoice for $9,000 issued to the Beneficiary for a "[s]pecial kit of services that may result in documents to be used by 'Client' in support for the I-129/L1A Non-Immigrant Executive Transfer, existing company."

- The Petitioner's credit card statements reflecting payments made to
- Articles of incorporation and articles of amendment for identifying as one of two company directors.
- Statement from document examiner, who opines that someone other than the Beneficiary and signed the documents in the record that bear their respective signatures. These documents include service agreements ostensibly bearing the Beneficiary's signature and two company letters bearing signature.
- Declaration of principal of the Petitioner's tax preparation services provider. states that her company did not prepare the tax and other financial documents submitted on behalf of the Petitioner in 2013, but did prepare the Petitioner's tax and financial documents submitted to USCIS in 2014 and later. She states that assisted in the creation of her company's logo and graphics "before 2013" and that he may have fabricated documents and correspondence purporting to originate from
- Opinion Report by reviewed the signatures of a employee found on the Petitioner's financial statements submitted to USCIS in 2013 and opined that the signatures on these documents were not written by the employee in question.
- Copies of email correspondence by and between employees of and the Beneficiary, with affidavit of associate forensics examiner with attesting to the authenticity of the e-mail correspondence.

Upon review, the evidence submitted on motion supports the Petitioner's previously uncorroborated claim that assisted it with the preparation of this petition to extend the Beneficiary's L-1A status. The evidence also calls into question the authenticity of the Petitioner's representative's signature on the Form I-129[1], and the authenticity of the tax returns and financial statements ostensibly prepared by and submitted in support of the petition prior to the Director's initial denial.

As outlined in our previous decision, for an immigration officer to find a willful and material misrepresentation in visa petition proceedings, he or she must determine: 1) that the petitioner or beneficiary made a false representation to an authorized official of the United States government; 2) that the misrepresentation was willfully made; and 3) that the fact misrepresented was material. *See Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961); *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975).

It is undisputed that the petition included false statements and was accompanied by fabricated documentation that misrepresented the Petitioner's staffing, structure, business activities, and financial status, facts that were material to USCIS' adjudication of this benefit request.

[1] reviewed signature on two company letters but did not review a copy of the Form I-129 that bears name as the signatory.

The Petitioner acknowledges that it knowingly hired an individual who is not an attorney or accredited representative to assist it with this petition. There is no remedy available for a petitioner who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on its behalf. *See* 8 C.F.R. § 292.1; *see also Hernandez v. Mukasey,* 524 F.3d 1014 (9th Cir. 2008) ("nonattorney immigration consultants simply lack the expertise and legal and professional duties to their clients that are the necessary preconditions for ineffective assistance of counsel claims").

The Petitioner claims that all misrepresentations are attributable to and that it did not intentionally or willfully misrepresent any facts to USCIS. However, the evidence submitted on motion is not sufficient to establish that the Petitioner had no knowledge of any wrongdoing on the part of

The Petitioner has not addressed our finding that the record contains documents on company letterhead that contain material information that is not true, including employee job descriptions and a business plan that provide names for employees that the Petitioner never employed and greatly exaggerated salaries and job titles for the Petitioner's actual employees. The Petitioner paid a significant sum of money to business for a "special kit of services that may result in documents to be used . . . in support for the I-129/L1A." We do not have a copy of an agreement or contract between the two parties or any further description of what those services were to entail.

The Petitioner has not stated whether it provided with its organizational chart, business plan, employee job descriptions, business documentation, or other relevant information that would reasonably be needed to prepare a petition and supporting documentation, nor has it specifically addressed our finding that the business plan and other documents on company letterhead contained the same false information found in the discredited financial documentation. Given that the Beneficiary denies that anyone in the petitioning company ever reviewed or signed any documents related to the petition, it appears that the "special kit of services" for which the Petitioner retained may have given authorization to prepare business plans, letters, organizational charts and other documentation containing whatever information he saw fit, to sign any and all documents on the Petitioner's behalf, and to take these actions with the Petitioner' full consent.

The evidence submitted on motion does show that office requested the Petitioner's quarterly tax returns, state quarterly wage statements, and IRS Forms W-2 for the years 2012 and 2013 and the Petitioner and provided an employee of company with this documentation by e-mail. Fabricated versions of these documents were submitted to USCIS two approximately two months later. The Beneficiary claims that he never saw the fabricated documents prior to receiving copies of those documents after filing the appeal, but, as noted above, we cannot determine what actions was authorized to take in preparing documents in support of the petition.

Turning to those fabricated documents ostensibly prepared by we note that statement that is known to her because he previously assisted her company with creating a logo and other graphics is not persuasive. is shown as the registered

agent for [redacted] company, [redacted] and [redacted] was listed as the contact for [redacted] 2014 annual report filed with state authorities.[2] While the record now shows that some of the Petitioner's financial and tax documents contain the fabricated signature of a [redacted] employee, it appears that [redacted] has not fully disclosed her company's dealings with [redacted] and we have accordingly given less weight to her statement.

The Petitioner knowingly hired an individual who is neither an attorney nor an accredited representative to prepare the Beneficiary's petition and acknowledges that it did not review or sign any documentation related to the petition. However, we find that it is more likely than not that the Petitioner authorized [redacted] to prepare, sign, and submit the petition and supporting documents, without any regard for the veracity of the statements made therein. The Petitioner therefore is not absolved of responsibility for the intentional material misrepresentations made to USCIS and has not overcome this basis for the dismissal of its appeal.

B. U.S. Employment in a Managerial or Executive Capacity

In dismissing the appeal, we further found that the Petitioner did not establish that it would employ the Beneficiary in a managerial or executive capacity under the extended petition. We found that the position description submitted prior to the denial of the petition was lacking in specificity and credibility in light of the fact that it stated that the Beneficiary would be supervising subordinate managers that the Petitioner did not actually employ and was accompanied by fabricated evidence related to the Petitioner's organizational structure, payroll and staffing levels.

We acknowledged that the Petitioner attempted to clarify its actual staffing levels, organizational structure, and subordinate employee duties in response to our NOID. However, we determined that the Petitioner did not provide further insight into the nature of the Beneficiary's duties and instead broadly described his duties as "designing and implementing strategic plans," being responsible for "the day to day operations," negotiating deals, and coaching a "high performance team."

We also considered evidence of the Petitioner's actual staffing levels, noting that the evidence before us on appeal showed that it had four part-time employees, each earning $1000 per month. The employees' pay statements submitted on appeal indicated that all four employees were "sales representatives" while the Petitioner stated that the subordinates held the positions of receptionist, financial assistant, administrative assistant and sales associate. We therefore found that the record did not contain credible information regarding the subordinate employees' actual job titles or duties, but nevertheless noted that, regardless of whether the employees are sales people or assistants, the record did not establish that they would relieve the Beneficiary from actually providing the company's consulting services.

[2] We further note that public records held by the Florida Secretary of State show that [redacted] was previously a manager-member of [redacted] along with [redacted] *See* website of Florida Department of State, Division of Corporations, Record Search, http://search.sunbiz.org/Inquiry/CorporationSearch/ByName (last accessed on May 3, 2017).

Finally, we considered the Petitioner's claim, made for the first time in response to our NOID, that the company had independently contracted staff including an account manager, a sales representative, a sub-contracted VOIP and Cloud technology systems installation provider, and a sub-contracted import-export services provider. We addressed the evidence submitted in support of these claims in detail in determining that the Petitioner did not establish that these contracted staff were regularly providing services or contributing to the day-to-day operations of the company at the time the petition was filed.

On motion, the Petitioner submits the following evidence relevant to this issue: (1) a table intended to provide the Beneficiary's daily job duties in a typical workweek at the time the petition was filed in October 2013; (2) IRS Forms 1099, Miscellaneous Income issued to [redacted] ($1624) and [redacted] ($11,164); and (3) Petitioner's employment agreement with [redacted] (area manager/account manager) dated June 1, 2013, indicating he was to procure and maintain business for Cloud and VoIP services and would be paid on a commission basis.

Upon review, this evidence is insufficient to establish that the Beneficiary would be employed in a managerial or executive capacity under the extended petition. First, the newly submitted job description does not assist in clarifying the nature of the Beneficiary's duties as it is similarly vague when compared to descriptions previously provided. It suggests that that the Beneficiary would primarily supervise, train and set goals for sales representatives and review company finances, while also spending a significant amount of time dealing directly with clients, prospective clients, and vendors, through calls, visits or delivery of business presentations. The description refers to "team leads" and "account managers" who the Petitioner has not counted among its 2013 staff previously. Overall, the description is too vague to establish that the Beneficiary's actual duties would be primarily managerial or executive in nature as of the date of filing. Further it provides little insight into the nature of the company's activities at the time of filing. There is a reference to the sales of VOIP and Cloud services, but, as noted previously it is unclear who would be providing these services if the entire staff consists of sales people.

We noted in our decision that the record on appeal contained inconsistent information regarding the job titles of the Petitioner's four part-time employees or the duties they perform. The evidence submitted on motion does not clarify the roles of the subordinate payroll employees other than suggesting that they are all sales people (despite the Petitioner's previous claim that the staff included a receptionist, a financial assistant, and an administrative assistant). The Petitioner has now provided evidence that it paid two contractors in 2013 (one individual and one company), but it did not identify these parties previously and has not stated what services they provided or whether they were providing services to the company in October 2013.

Finally, the Petitioner has submitted [redacted] employment agreement in support of its previous claim that he was serving as the company's account manager at the time of filing. The record does contain evidence that the Petitioner paid him $47,000 on Form 1099 in 2013, while its general ledger indicated that it paid him $82,794 in 2013, with all but one payment occurring in October of that year. While it appears that [redacted] was providing services for the Petitioner at or around the time of filing, this evidence is insufficient to overcome the many deficiencies with the Petitioner's

evidence and does not overcome our finding that the evidence as a whole did not establish that the Beneficiary would be employed in a primarily managerial or executive capacity.

C. Doing Business

In dismissing the appeal, we noted that the record prior to the denial of the Petition consisted of fabricated financial statements and tax returns and noted other irregularities in the Petitioner's evidence and in its description of the nature of its business.

We acknowledged that, on appeal, the Petitioner had submitted dozens of invoices from throughout 2013 for invoices described as "VOIP and Cloud technology including training, support, implementation of motivational speeches with focus on sales increase and network creation, development of Internet and social media campaigns, assistance with focus on sales increase and development of Multilevel marketing teams." We noted that the Petitioner's address on all 2013 invoices, regardless of the date issued, was listed as [redacted] an office the Petitioner did not occupy until on or about October 1, 2013.

We further found that, based on our discussion of the Petitioner's actual staffing levels and organizational structure, it was unclear whether the Petitioner had the staff to provide the types of services identified in its contracts and invoices. In light of the inconsistencies and fabricated documents in the record, and because there was a lack of probative supporting evidence to corroborate the figures contained in the Petitioner's 2013 tax return, we found insufficient evidence to establish by a preponderance of the evidence that it was doing business as defined in the regulations.

On motion, the Beneficiary, in his declaration, references the [redacted] address found on all of the Petitioner's 2013 invoices. He explains as follows:

> For tax purposes, at the end of 2013, my office prepared various invoices for services rendered prior to October 1, 2013. These invoices all set forth the address of [redacted] even though [the Petitioner] was located at a different location prior to October 1, 2013. This was performed for bookkeeping reasons only. Attached as Exhibit C is such an invoice and bank statement of receipt of payment, confirming the legitimacy of this transaction.

"Exhibit C" includes a copy of an invoice issued to [redacted] on September 17, 2013 for $8,380 and the Petitioner's September 2013 bank statement showing a "counter credit" in the amount of $8,380 made on September 17, 2013.

The evidence submitted on motion does not further address the Petitioner's business activities in 2013. We find the Beneficiary's explanation that the wrong address appeared on most of its invoices for "bookkeeping purposes" or "tax purposes" to be insufficient to overcome our concerns regarding this issue. Further, the submission of evidence related to the legitimacy of a single transaction, when the Petitioner claimed more than half a million dollars in sales in 2013, is similarly

insufficient. As noted in our decision, given the Petitioner's initial submission of a significant number of fabricated documents in support of the petition, we would expect substantial documentation to corroborate the claimed income figures on its actual tax return. The Petitioner has not submitted sufficient relevant and credible documentation of its business activities in the year leading up to the time of filing.

III. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause to reopen the proceeding or established eligibility for the immigrant benefit sought.

ORDER: The motion to reopen is denied.

Cite as *T-I- Corp.*, ID#008677 (AAO May 19, 2017)